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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re S.L., a Person Coming Under the Juvenile  
Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.H.,

Defendant and Appellant.

F078040

(Super. Ct. No. 17CEJ300204)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Leanne LeMon,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Roni Keller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Daniel C. Cederborg, County Counsel, and Lisa R. Flores, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Franson, J. and Peña, J.

S.H. (mother) appeals from the juvenile court's order terminating her parental rights under Welfare and Institutions Code section 366.26<sup>1</sup> as to her now two-year-old daughter S.L. She contends the Fresno County Department of Social Services (department) failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) by not asking S.L.'s father if he has Native American ancestry. She seeks reversal of the juvenile court's order terminating her parental rights. The department concedes error. We concur the department failed to comply with the ICWA notice requirements. Therefore, we conditionally reverse the order terminating parental rights and remand for the limited purpose of ensuring ICWA compliance.

### **PROCEDURAL AND FACTUAL SUMMARY**

One-month-old S.L. was taken into protective custody in June 2017 after mother was involuntarily detained (§ 5150). Mother was acting irrationally while caring for S.L., including yelling and using profanity towards the baby. She reported using methamphetamine and marijuana the night before. The department placed the baby in foster care. S.L.'s biological father, D.W., was incarcerated.

The juvenile court ordered S.L. detained and the department initiated service referrals for mother. However, her whereabouts became unknown until she contacted a social worker to say she was hospitalized at a psychiatric facility and was under the care of a conservator. In January 2018, she left the facility and her whereabouts again became unknown. Meanwhile, the juvenile court adjudged S.L. a dependent child (§ 300, subd. (b)(1)) and ordered mother to participate in reunification services. The court did not order reunification services for D.W. (§ 361.5, subd. (a).) The court found the

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

ICWA did not apply because mother reported she did not have any Native American ancestry.

In February 2018, the juvenile court terminated reunification services at the six-month review hearing and set a section 366.26 hearing for June 2018.

In its report for the section 366.26 hearing, the department recommended the juvenile court terminate parental rights and select adoption as S.L.'s permanent plan. The department could not, however, recommend adoption with her current caregivers because of a recent investigation. The department informed the court it conducted a new ICWA inquiry in June 2018 and mother stated she did not have Native American ancestry. It was unable to ascertain D.W.'s ancestry because he did not contact the department.

The juvenile court conducted the continued section 366.26 hearing in July 2018. Neither parent personally appeared, but they were represented by counsel. The court found that S.L. was likely to be adopted and terminated parental rights.

Mother does not challenge the order terminating her parental rights. Her sole contention on appeal is that the juvenile court erred in finding that the ICWA did not apply without first inquiring whether D.W. had Native American ancestry.<sup>2</sup>

### **DISCUSSION**

“Congress enacted ICWA to further the federal policy ‘ “that, where possible, an Indian child should remain in the Indian community ....” ’ ” (*In re W.B.* (2012) 55 Cal.4th 30, 48.) California has adopted statutes and rules that “implement, interpret, and enlarge upon” ICWA. (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1157.) Under these provisions, the juvenile court and the agency have “an affirmative and continuing duty to inquire whether a child ... is or may be an Indian child ....” (§ 224.2, subd. (a); Cal.

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<sup>2</sup> Mother has standing to raise the issue of ICWA compliance even though she is not the parent with alleged Indian heritage. (*In re B.R.* (2009) 176 Cal.App.4th 773, 779.)

Rules of Court, rule 5.481(a).)<sup>3</sup> The county welfare department must ask the parents whether the child is or may be an Indian child. (Rule 5.481(a)(1).) Upon a parent's first appearance in a dependency proceeding, the juvenile court must order the parent to complete a *Parental Notification of Indian Status* (form ICWA-020). (Rule 5.481(a)(2).) If the parent does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the county welfare department to use reasonable diligence to find and inform the parent to complete form ICWA-020. (Rule 5.481(a)(3).)

In this case, the department failed to satisfy its duty of inquiry under the ICWA by asking D.W. whether he had Native American ancestry. Consequently, the juvenile court's finding the ICWA did not apply was error.

### **DISPOSITION**

The juvenile court's order terminating parental rights is conditionally reversed. The cause is remanded with directions to conduct such further proceedings as are necessary to establish full compliance with the ICWA notice requirements. If D.W. indicates he does not have Native American ancestry, the orders terminating parental rights shall be reinstated and such further proceedings as are appropriate shall be conducted. If, however, D.W. indicates he has Native American ancestry, the department shall notify the identified tribes according to the ICWA. If, after providing notice as required by the ICWA, no response is received from the Department of Interior, Bureau of Indian Affairs and the relevant tribes indicating S.L. is an Indian child, or if the responses received indicate S.L. is not an Indian child within the meaning of the ICWA, the orders terminating parental rights shall be reinstated and such further proceedings as are appropriate shall be conducted. If any tribe determines S.L. is an Indian child within

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<sup>3</sup> References to rules are to the California Rules of Court.

the meaning of the ICWA, the juvenile court shall proceed accordingly. In all other respects, the order terminating parental rights is affirmed.